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April 9, 1998

The Honorable John M. McHugh
Chairman
Subcommittee on the Postal Service
Room B-349C, Rayburn Building
Washington, D.C. 205 15-6147

Re: Comments of DHL Airways, Inc. On Proposed Revisions to H.R. 22

Dear Mr. Chairman:

Attached are the comments of DHL Airways, Inc. ("DHL") on the proposed revisions to H.R. 22, the Postal Reform Act of 1997. DHL appreciates the opportunity to comment on this important issue and, in particular, thanks the Subcommittee for affording it an additional two days to file these comments. Pursuant to our discussions with your staff, we have enclosed a version of our submission in the Microsoft Word format to simplify the staffs handling of the comments.

As set forth in detail in our submission, DHL believes that the proposed revisions to H.R. 22 represent a thoughtful and balanced basis for beginning the long-overdue process of postal reform, particularly regarding those provisions of the law that place domestic and international express delivery firms at an unfair competitive disadvantage. We look forward to working with you and your staff on the development of definitive legislation and would be pleased to provide additional comments or suggestions to the Subcommittee on this issue.

Sincerely,



Peter N. Hiebert
Edward F. Gerwin, Jr.

Counsel for DHL Airways, Inc.

**Before The
House Subcommittee on the Postal Service**

**COMMENTS OF DHL AIRWAYS, INC.
ON THE
POSTAL REFORM ACT OF 1997 --
PROPOSED REVISIONS (H.R. 22)**

April 9, 1998

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COMMENTS OF DHL 'AIRWAYS, INC.
ON THE
POSTAL REFORM ACT OF 1997 --
PROPOSED REVISIONS (H.R. 22)

I. Introduction

DHL Airways, Inc. ("DHL"), the U.S. arm of the DHL Worldwide Express Network, appreciates the opportunity to comment on the Subcommittee's December 1997 "white paper" on proposed revisions to the Postal Reform Act of 1997 (H.R. 22) (the "Proposed Revisions"). The DHL network employs over 40,000 people around the world and generates over \$6 billion in annual revenues. As the world leader in the international transportation and delivery of time-sensitive business documents and parcels, DHL has a particular interest in those provisions of the Proposed Revisions that affect international delivery services.

DHL has previously testified before the Subcommittee on postal reform and wishes to commend Chairman McHugh and the Subcommittee staff for their hard work and thoughtful efforts on this difficult issue. DHL believes that the Proposed Revisions provide a workable and balanced framework for beginning the long-overdue process of U.S. postal reform.

DHL is pleased that the Proposed Revisions incorporate key provisions proposed earlier by DHL and other international delivery companies. These provisions would provide a measure of fairness in the international delivery sector by restricting the ability of the U.S. Postal Service ("USPS") to employ its special legal privileges and quasi-governmental status to compete unfairly with private international delivery companies. The Proposed Revisions would allow the USPS to continue to provide and develop international services that compete with private delivery companies, but would require that these and other USPS competitive services generally be subject to the same legal requirements that currently apply to the express industry and private delivery companies.

In these comments, DHL submits that it is critically important to reform current law as it applies to international delivery services and comments upon particular provisions set forth in the Proposed Revisions. DHL looks forward to continuing to work with the Subcommittee on the development and adoption of fair and pro-competitive postal reform legislation.

II. DHL and the International Air Express Industry

DHL specializes in the rapid, door-to-door transmission of time-sensitive business documents and small parcels in the United States and around the world. DHL is a fully integrated transportation and delivery company; it operates its own fleet of jet aircraft, helicopters and ground vehicles and also employs on-board couriers, scheduled commercial aircraft and charter planes. To facilitate clearance of international shipments, DHL maintains its own customs brokerage operation in each of its scheduled ports of entry in the United States. By exercising complete administrative control over each document or parcel from pick-up to delivery, DHL provides a level and quality of service that cannot be matched by the international services traditionally provided by the USPS, foreign postal administrations and other entities that lack technologically advanced tracking systems and whose administrative control over shipments stops at national boundaries.

In today's interdependent international marketplace, the transfer of information has become as significant to the world's business as the transfer of goods and capital. Since their founding less than three decades ago, DHL and other integrated international delivery companies have played an increasingly essential role in promoting the growth of international commerce. DHL provides international express services primarily to service industries that compete in global markets — international financial institutions and corporations, legal and consulting firms, government entities, transportation and shipping companies, engineering and construction firms and multinational institutions. Among other things, international express delivery firms like DHL provide rapid and reliable delivery of sensitive financial instruments, bills of lading and corporate communications. They also deliver small packages and, increasingly, heavier shipments of goods and parts for merchandisers, just-in-time manufacturers, and research and technology firms. These services greatly enhance the efficiency, cost-effectiveness and competitiveness of individual firms and the global market as a whole.

III. The Need to Reform Laws Governing International Delivery Services

Our nation's outdated postal laws are particularly ill-suited for today's dynamic market for international delivery services, in which sophisticated and technologically advanced firms provide fully integrated and critical delivery services to a wide array of global businesses. As explained below, current postal laws and practices: (1) fail to recognize the role and importance of private international delivery providers in facilitating growth and commerce in the modern economy; (2) unfairly permit the USPS to grant, enforce and interpret the rights of its competitors; (3) fail to

address significant issues relating to the manner in which the USPS provides and regulates international services; and (4) provide unfair advantages to the USPS in its increasingly aggressive competition with private international delivery firms. The Proposed Revisions are an important first step in correcting these flaws and in reforming U.S. postal law to reflect the realities and competitive circumstances of the modern international delivery business.

A. The Failure to Account for Private International Delivery Services

Congress last overhauled the general postal law in 1970 -- only one year after the founding of DHL and before the establishment of Federal Express and other express delivery firms. At the time, the limited competition provided by private on-board courier services could hardly have presaged the multi-billion dollar express delivery industry of the late 1990's. As a result, it is not surprising that existing postal laws fail to account for the fact that fully integrated private express firms today provide critical international delivery services, often in direct competition with the USPS.

The growth of private express delivery services over the last three decades has required significant changes in other laws and practices governing international commerce. A prime example is the adoption by the U.S. Customs Service in 1989 of regulations that provide specific procedures governing international shipments by integrated express delivery firms.^{1/} In adopting these rules almost a decade ago, the Customs Service recognized that its existing procedures failed to account for the transformation in international trade and commerce brought about by the express industry. Current postal laws are similarly flawed. In particular, the postal laws must be revised to address an issue that Congress did not envision in 1970 -- that the USPS would employ its legal privileges and quasi-governmental status to compete unfairly in the international marketplace to the detriment of private delivery firms.

B. The Postal Monopoly and International Service

As DHL has explained in detail in prior testimony, the ability of private international express carriers to compete in the world market has been seriously complicated and continually threatened by the postal monopoly as set forth in current law and as expansively defined by the USPS. Under the Private Express statutes, the USPS asserts a "monopoly" on the carriage of "letters" -- commercial as well as personal -- on any "postal route," including international routes.

^{1/} 19 C.F.R. Part 128.

Any violation of this self-defined monopoly -- by a carrier or user -- can result in an injunction, fine or imprisonment, or a combination thereof.” The USPS has unilaterally chosen to “suspend” its asserted monopoly in certain politically sensitive circumstances. In particular, under threat of Congressional repeal of the Private Express Statutes in 1979, the USPS has suspended the monopoly for “extremely urgent letters” which meet certain “time of delivery” or “price” tests. Among other things, the USPS regulations which implement these suspensions provide definitions for the international delivery and dispatch of letters.^{3/}

The expansive definition of the postal monopoly under current law and USPS practice requires the interposition of the USPS -- a competitor by fiat -- in either the content or price of time-sensitive deliveries by its competitors. The current rules hold DHL and other international express delivery firms hostage to administrative exceptions granted, interpreted and enforced by a monopoly that is, at the same time, seeking to compete aggressively and unfairly for international delivery business. Such rules have no place in the commerce of the 1990's, in which DHL and other express delivery firms provide critical services to U.S. businesses that compete domestically and in the global marketplace.

C. Other Flaws in the 1970 Act

In drafting the Postal Reorganization Act of 1970, Congress failed to consider the interplay among the reorganization of the USPS, the delivery of international mail and the conduct of international postal policy. This oversight has led to a regulatory environment in which basic principles of fairness, transparency and due process do not apply to the provision of international mail services.

A fundamental flaw in the 1970 Act is its failure to require Postal Rate Commission (“PRC”) approval for international mail rates. The PRC’s regulatory oversight of domestic mail services is intended to protect against the abuse of monopoly power in developing new anti-competitive “mail” products, the cross-subsidization of products that do compete with private delivery companies, and the undermining of private competitors through predatory pricing and behavior. These same threats to fair competition are equally present when domestic monopoly service providers engage in international commerce. As long as it retains a monopoly over domestic mail, there is risk that the USPS will use its monopoly power to provide itself with unfair advantages

^{2/} 39 C.F.R. 3 10.2.

^{3/} 39 C.F.R. Part 320.

in international services, such as the predatory pricing of express mail service and unfair competition through cross-subsidies from first class domestic mail. Indeed, there is troubling evidence that the USPS is, in fact, utilizing these unfair advantages in its international marketing. According to a recent report in *Business Mailers Review*, the data for international services in the 1998 Postal Service Marketing Plans differs from that reported in the 1996 Cost and Revenue Analysis and the 1997 Rate Case. According to the data in the Marketing Plans, the products of the USPS International Business Unit would cover only 57 percent of attributable costs.^{4/} This evidence, and the clear potential for other abuses, point to the need for reform in this area. There is simply no basis in logic or sound policy for exempting the USPS from PRC regulatory oversight and accountability in its provision of international mail services.

Current law authorizes the USPS to represent the United States at international congresses of the Universal Postal Union (“UPU”) without effective direction from the President, Congressional oversight or public participation. The international express industry and past U.S. administrations have repeatedly criticized this arrangement, under which the USPS acts as the sole U.S. negotiator of international postal agreements while, at the same time, actively competing in the international delivery market. In view of this untenable arrangement (as well as the longstanding hostility of certain foreign postal administrations to the private express industry) it is hardly surprising that various UPU acts and policies often have anticompetitive effects on the international private express industry. For example, Article 25 of the UPU Convention authorizes national post offices to intercept and return international “mail” that has not been posted by the country of dispatch. Other provisions permit non-cost-based interpostal charges that allow postal administrations to manipulate international rates and thereby undermine private carriage. It is fundamentally unfair for the USPS to have such broad powers to shape the regulatory environment under which it also competes with private firms.

D. New International Services

The serious deficiencies in current U.S. legal regulation of international mail services have also been highlighted by the various competitive international products introduced by the USPS in recent years. In 1995, for example, the USPS announced its intention to compete “aggressively” in the international market and to become a leading provider of efficient, high value, reliable and secure, full-service international communication and package delivery services. In implementing

^{4/} See, e.g., USPS, *Revenue Pieces and Weight Reports*; USPS, *Cost and Revenue Analyses*; Patelas Testimony in R97-1 (Exhibits T-1 5E, J); 1998 *USPS Marketing Plans* (Oct. 1997).

this policy, the USPS has created an International Business Unit and has introduced an array of new, value-added international services that go far beyond traditional international mail.

Traditionally, the USPS and its predecessors delivered international mail to the sovereign boundaries of a foreign country, at which point the foreign postal authority took control of the mail, cleared it through customs and effected delivery. Unlike international express delivery firms, the USPS did not provide -- and, indeed, was generally understood not to have the authority to provide -- integrated, door-to-door express delivery across national boundaries, with central administrative control from pickup to delivery.

International services introduced by USPS in recent years, however, represent a fundamental shift in the manner in which the USPS provides delivery services to foreign countries. For example, under its Global Package Link Service ("GPL"), the USPS is aggressively seeking to provide international merchandise delivery services which compete directly with the integrated package services of private express couriers. Under the GPL program, the USPS employs its own designated customs broker for foreign customs clearance and employs a "delivery agent" for expedited, secure delivery with tracking in the foreign country. In effect, through the use of agents in the foreign market, the GPL program purports to provide integrated, end-to-end parcel delivery service much like that provided by private express couriers.

DHL does not object to direct competition but, rather, to the unfair advantages enjoyed by the USPS in providing these competitive international services. In repeated submissions to the USPS, the international express delivery industry has pointed out that the GPL service likely benefits from cross-subsidization from monopoly classes of mail and/or plain predatory pricing. Moreover, in providing GPL and other competitive services, the USPS can avail itself of special privileges as the national postal monopoly and as a quasi-government agency with exclusive access to foreign postal administrations through the UPU -- advantages not available to its private competitors. Special advantages that are not available to private couriers include:

- the use of the USPS' governmental status to obtain special customs privileges from foreign postal administrations to expedite customs clearance (e.g, the USPS claims that GPL provides the "fastest clearance" through the customs administrations of participating foreign countries);
- special customs rates; exemptions from duties, fees and taxes; and special services for "mail" products that enable USPS to provide sharply discounted prices; and

- the benefits of foreign postal tariffs that provide special discounts to the USPS and foreign taxes and other restrictions on private international delivery services that are designed to protect the national postal monopoly or other favored providers.

DHL and the international express delivery industry are concerned not only with the scope of the special advantages afforded to the USPS but with the aggressive efforts of the USPS to use these advantages to expand into new competitive markets and services. The USPS has made it clear that it intends to capitalize fully on these special “mail” privileges in competing for international delivery business. In its recent marketing plans, the USPS notes that “[t]he international mailing market is deregulated and intensely competitive, particularly in the expedited and package markets.” The USPS will compete in this open and competitive market by availing itself of special advantages that flow from its status as the national postal monopoly, noting that its “close contacts with foreign postal administrations and governments provide a unique customer value” and a “competitive advantage” that can be “leveraged” in seeking new international business.^{5/}

The development of the GPL service and other new USPS international services vividly illustrates the unchecked growth of unfair USPS competition in the international delivery market. From its beginnings in late 1994 as a special program for catalogue company deliveries to Japan, the GPL service has been expanded to 10 additional markets -- Brazil, Canada, Chile, China, France, Germany, Hong Kong, Mexico, Singapore and the United Kingdom -- and its minimum requirements have been considerably liberalized. These extensive forays into the competitive international market have often occurred under “interim rules” with no meaningful oversight or prior public participation. Just last month, for example, the USPS published an “interim rule,” to take effect immediately, under which mail order companies can send catalogues to the foregoing countries for as low as \$0.80 per piece, provided that they use the GPL service to deliver resulting orders.^{6/} This program is but a further effort by the USPS to leverage its unfair cost and regulatory advantages -- through a classic tie-in arrangement -- to gain further inroads in the competitive international market.

It is inequitable to permit the USPS to benefit from cost and regulatory privileges that are available only to national postal administrations when it is seeking to provide -- with no

^{5/} USPS 1998 *Marketing Plan* at INT p. 2 (Oct. 1997).

^{6/} 52 *Fed. Reg.* 13124 (Mar. 18, 1998).

meaningful oversight -- international delivery services that are directly competitive with the private sector. These special advantages harm not only the international express industry but also lead to economic inefficiencies that affect every American. Each time the USPS uses its monopoly or quasi-governmental status to obtain an unfair advantage over its competitors, its services will not be as efficient as those provided by a company that would provide the services on a competitive basis. Whether through higher costs for consumers of noncompetitive products like standard mail, or through the inefficient use of capital and labor that could be used more efficiently elsewhere in the economy, the economy is distorted and damaged whenever the USPS obtains its customers in the competitive arenas through its status as a quasi-governmental agency or as a monopolist.

IV. The Subcommittee's Proposed Revisions

As we have previously testified, DHL believes that rapid technological change and the continued evolution of the global market for information transfer call for a serious examination by Congress of whether the Private Express Statutes are obsolete and the postal monopoly should finally be ended. Although the Proposed Revisions do not take these steps, DHL believes that, by restricting the most serious abuses under current law, they provide an important first step on the road to complete postal reform.

As a competitor in the U.S. domestic market, DHL supports those provisions of the Proposed Revisions that will provide for greater fairness in competition for domestic and international delivery services. For example, the provisions of Section 603, which grant increased powers to the renamed Postal Regulatory Commission, and the provisions of Title IV that protect against the subsidization of competitive products with non-competitive product revenues, represent welcome and long-overdue changes in current law. Moreover, the narrowing of the letter mail monopoly under section 703 through the adoption of a \$2 limit will clarify the scope of the statutory monopoly which -- to the detriment of private carriers -- has historically been defined solely by the USPS. These and other reforms in the Proposed Revisions will help create a more competitive and efficient delivery market and provide more choices to U.S. consumers.

As the leading firm in the international delivery of time-sensitive business documents and parcels, DHL has a particular interest in those sections of the Proposed Revisions that will help to level the playing field in the market for international delivery services. The most significant of these provisions are discussed below.

A. PRC Jurisdiction Over International Mail

As noted above, the public policy considerations that underlie PRC review of rates for non-competitive domestic mail -- controlling predatory pricing and abuses of monopoly power -- apply with equal force to the pricing of non-competitive international mail. Nevertheless, current law does not authorize the PRC to regulate international mail. The Proposed Revisions address this significant gap in current law by granting authority over international postal rates to the new and strengthened PRC. Section 1002 of the Proposed Revisions requires a PRC recommendation decision for all postal products, including international mail. DHL strongly supports this important pro-competitive change in current law.

B. Impartial Development and Application of Rules for International Services

As explained above, the USPS's ability to represent the United States at intergovernmental organizations and its exclusive access to national postal authorities enables the USPS to advance its own competitive position at the expense of its private competitors. The USPS cannot adequately represent the concerns of the entire U.S. delivery sector because, as a competitor, it has an interest to seek measures that are most beneficial to itself. Title II of the Proposed Revisions addresses this concern by vesting the authority to represent the United States before intergovernmental organizations in the United States Trade Representative ("USTR") rather than the USPS. In addition, Title II would preclude USTR and the USPS from concluding agreements or entering into arrangements with foreign postal authorities that give special preferences to the USPS in the provision of competitive services.

These provisions will help assure that the rules governing international services will be developed and applied in an impartial manner. DHL has previously proposed that the USTR lead U.S. delegations to intergovernmental postal meetings and believes that the USTR is particularly well-suited to assure that the interests of the entire U.S. delivery sector are represented before these organizations. Unlike the USPS, the USTR has no inherent conflict of interest and has a proven track record in seeking open, pro-competitive and transparent rules for international trade in goods and services.

Placing the USTR in this role will also help to assure greater consistency between U.S. postal policy and the nation's overall international trade policies. As the agency charged with the elimination of unfair foreign trade barriers, the USTR has worked with the U.S. express industry in efforts to remove unfair trade barriers in such jurisdictions as the European Union, Mexico and

Taiwan.” Moreover, in negotiating international agreements like the North American Free Trade Agreement and General Agreement on Trade in Services, the USTR has helped establish the fundamental international principle that monopolies and state enterprises should not be permitted to employ their monopoly position to engage in anticompetitive practices in competitive markets.” As the leader of U.S. delegations to international postal organizations, the USTR will be well positioned to advance these important U.S. policy goals in the international postal sector and to help ensure fairness for all international delivery providers.

C. Equal Application of Rules to USPS Competitive Services

As illustrated by its Global Package Link Service and other competitive international services, the USPS is moving aggressively to compete directly with fully integrated international delivery providers like DHL. In providing these new services in the competitive sector, the USPS can avail itself of its special legal privileges and status as the provider of “postal” services. The Proposed Revisions would make it clear that, in providing such competitive services, the USPS cannot violate antitrust rules to shield itself from its competitors. DHL supports those provisions of Title X that would subject all USPS services to the Lanham Act and would subject USPS competitive and experimental services to the antitrust provisions of the Clayton, Sherman and Federal Trade Commission Acts. Moreover, the provisions of Title X that subject USPS competitive services to the same vehicle regulations, customs laws, VAT laws, and local zoning laws that apply to its private competitors are a crucial step toward assuring that normal regulatory requirements apply to the USPS in its provision of competitive delivery services.

DHL believes that the provision of Title X that provides for a Department of Justice study of legal disparities in the treatment of competitive products provided by the USPS and private firms is particularly wise, given the complexity of these issues. In the international area, for example, there are numerous differences in the customs and other rules governing the manner in

^{7/} See 1997 *National Trade Estimate on Foreign Trade Barriers*.

^{8/} See *North American Free Trade Agreement*, Chapt. 15; *General Agreement on Trade in Services*, Art. VIII. For example, NAFTA Article 1502 requires each participating country to assure, “through regulatory control, administrative supervision or the application of other measures” that private and government monopolies do not use their monopoly position to “engage ... in anti-competitive practices in a non-monopolized market in its territory that adversely affect [a private foreign party], including through the discriminatory provision of the monopoly good or service, cross-subsidization or predatory conduct.” *Id.*

which the USPS and the private sector provide essentially similar express services. Under Part 128 of the Customs Service regulations, for example, private express delivery companies have numerous obligations that are not imposed on the USPS. These include:

- the requirement to obtain Customs bonds for certain shipments;
- the obligation to make outbound and in-transit shipments available for Customs Service inspection;
- special record keeping and automation obligations; and
- special training and security requirements.

While some differences in treatment in these and other areas may be justified to assure that the private express industry can provide its superior time-sensitive and fully integrated services, any review of differential treatment should assure that the USPS is not permitted to receive such beneficial treatment without also assuming any related obligations that are imposed on private couriers.

DHL believes that a detailed, objective study of these and other key differences in treatment are crucial to assuring that the Congressional goal of equal treatment set forth in the Proposed Revisions is, in fact, fully implemented. Such a study will identify additional changes in law and practice necessary to address all areas in the competitive sector in which the USPS still has an unfair advantage. The Subcommittee and Congress as a whole should move rapidly to fully implement these recommended changes as soon as possible after the issuance of the Department's report.

V. Conclusion

In areas such as trade and telecommunications, the United States has been a world leader in efforts to free domestic and international markets from outdated and anticompetitive regulatory schemes which hamper free and fair competition. Some foreign countries are beginning to liberalize their own postal regimes by moving toward privatization. It is well-established that liberalization is long-overdue in our nation's regulation of domestic and international postal and delivery services. The Proposed Revisions are an essential and welcome step in this process, and DHL is eager to assist the Subcommittee in this necessary effort.

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